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UNCLAS ALMATY 001838

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E.O. 12958: N/A

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SUBJECT: KAZAKHSTAN: TROUBLING NGO LAW UNDER CONSIDERATION

REF: Almaty 1709 (EXDIS)

1. (SBU) Summary: Draft legislation currently under consideration in the Kazakhstani parliament has the potential to severely restrict the activities of NGOs, particularly those receiving foreign assistance. U.S. implementing partners are mobilizing to fight the draft, which legal experts have roundly criticized. The legislation would require all non-commercial organizations to notify local authorities ten days before all events; prohibit a broad range of activities; mandate local government approval for any foreign funding of Kazakhstani organizations; institute a two-step registration requirement, including the re-registration of all international NGOs; forbid non-Kazakhstanis from heading branches or representative offices of international NGOs; forbid international NGOs without an office in Kazakhstan from providing any assistance to local partners; and institute an annual reporting requirement for international NGOs. Post is actively engaging the GOK to push for rejection of the entire package of legislation. End summary.

Draft Legislation Introduced

2. (U) On April 20, a plenary session of the Mazhilis (lower house of Parliament) agreed to consider a package of draft legislation dealing with non-commercial organizations. The legislation is designed to increase state control over NGOs, particularly those receiving foreign assistance. The two items, a draft law "On the Activities of Branches and Representative Offices of International or Foreign Non-Commercial Organizations in the Republic of Kazakhstan" and a package of related amendments, were introduced by five Mazhilis members.

3. (SBU) The five sponsors are E. Abylkasymov (the instigator of the investigations of 33 U.S.-funded NGOs), S. Boyarkiy, N.G. Itemgenov, V.N. Kotovich, and M.V. Troshikhin. The fact that the legislation was introduced by Mazhilis members rather than by a ministry or the Presidential Administration initially gave some hope that the GOK did not support it. Ambassador's subsequent conversations (reftel) revealed that the GOK, if not the instigator of the measures, now supports them.

Immediate Negative Reaction

4. (SBU) The NGO community both in Kazakhstan and abroad has mobilized to fight the legislation. Several working groups have been formed to analyze the drafts, devise a legislative strategy, and call public attention to the potential impact of the legislation. At the suggestion of their representatives in Kazakhstan, the heads of eight NGOs (Freedom House, IRI, NDI, Internews, IFES, International Center for Non-for-Profit Law, ABA-CEELI, and OSI) sent an open letter to the Speaker of the Mazhilis on May 9 calling on him to reject the draft legislation in its entirety. The director of Freedom House in Kazakhstan also spoke out at a May 10 roundtable in Almaty, attracting local press coverage with his criticism of the legislation.

Initial Analysis of the Provisions

5. (SBU) Analysis produced by ICNL, Penal Reform International, and ODIHR (early draft) has been critical of all provisions of the draft legislation. Consensus is that, if adopted as written, the legislation would severely hinder international assistance and stifle the development of civil society in Kazakhstan. Although many of the more restrictive measures apply only to representative offices or branches of foreign/international NGOs, additional reporting and registration requirements would also hamper the work and

development of local NGOs.

16. (SBU) Drawing on the analysis produced to date, post has identified the following areas of concern in the draft legislation:

Notification requirement: The drafts require all organizations, both Kazakhstani and foreign, to notify local executive bodies at least ten days before all planned activities; to provide information about "number and composition" of participants and copies of materials; and to permit access for local authorities. This would severely limit the ability of NGOs to organize events expeditiously, would create an enormous logistical burden for NGOs, and would result in unmanageable administrative burden for local authorities. It would also provide local authorities with overly broad leeway to object to activities, as the list of unacceptable goals is extremely vague (see below). Failure to notify would result in disproportionate sanctions, starting with a \$1500 fine and possibly closure. International practice is generally that governments can only require organizations acting with state support to report the details of their activities to the state.

Broad and vague grounds for refusal of registration: Organizations are prohibited from engaging in a number of activities. Some prohibitions are so vague that they could be cited as the basis for refusing to register any type of organization. For example, the draft prevents organizations from engaging in activities aimed at "other consequences not desirable for Kazakhstan." Other provisions are also open to broad interpretation, including one section that equates holding "unauthorized meetings" with efforts to exacerbate the social and political situation in Kazakhstan. These provisions would give the Ministry of Justice unlimited authority to deny registration, and would give local authorities broad leeway to act against registered organizations.

Limitations on funding: The drafts would require foreign and international NGOs to obtain the approval of local executive bodies in order to provide funding to local organizations. This constitutes an unacceptable restriction on freedom of association, as it would give local authorities broad leeway to monitor and restrict the activities of local organizations. Such a requirement would severely limit the ability and willingness of foreign assistance providers to provide assistance across the full range of political, economic, and social programs. Some NGOs are also concerned that it could exacerbate corruption by creating the opportunity for local officials to extract assistance funds for themselves.

Registration requirements: All non-commercial organizations are already required to register with the Government of Kazakhstan to operate. The drafts would add a prerequisite step to registration, "accreditation" by the Ministry of Justice. This requirement is redundant, achieves no identifiable goal, and gives the Ministry of Justice unlimited authority to request "additional materials" and prolong the decision process indefinitely. In addition, the requirement for all branches and representative offices of foreign NGOs already operating in Kazakhstan to re-register within three months is an unjustifiable burden and will be seen as an effort to eliminate politically unfavorable organizations.

Restrictions on citizenship: The drafts would make only Kazakhstani nationals eligible to be heads of branches or affiliates of foreign NGOs in Kazakhstan. This measure contradicts the International Covenant on Civil and Political Rights by unduly discriminating against aliens. Kazakhstani legal experts also believe it contradicts Article 12 (4) of the Constitution of the Republic of Kazakhstan.

Requirement to operate only through local offices: This would prevent a wide range of donor organizations based abroad, working to support the Government of Kazakhstan's own reform goals, from providing assistance to local organizations. International NGOs would be forced either to undertake the unnecessary expense of establishing an office in Kazakhstan, or cut off funding. Transparency of such U.S.-funded assistance already exists, as the U.S. government provides information about all assistance partners, not just those based in Kazakhstan, in an annual diplomatic note to the Government of Kazakhstan.

Annual reporting requirement: While many countries have reporting requirements for all organizations that benefit from tax exemptions, the requirement in this draft legislation applies only to branches and representative offices of foreign NGOs. It is therefore discriminatory because these organizations are subjected to greater scrutiny than other non-commercial organizations. In addition, the provision permitting verification of the published information by the "authorized public bodies"

would create the opportunity for endless audits and investigations.

17. (SBU) An Explanatory Note issued with the draft legislation made reference to a number of European laws as justification for these measures. These references did not accurately reflect the content of the legislation cited. For example, the Spanish law cited refers to the fact that NGOs are not allowed to pursue terrorism or other illegal activities; it is used to justify a provision that would prohibit a much wider range of activities. The Polish law in question stipulates that only Polish citizens can found an association; it does not place limits on the citizenship of leaders, as the drafters of the Kazakhstani legislation claim. The French Law on Contracting to Associate does not require government approval of funding to NGOs; in fact, it explicitly states the opposite.

Comment

18. (SBU) Comment: Rather than being grounded in European principles, this draft legislation appears to be inspired by the Uzbek model. The Ambassador has raised our concerns with the GOK on several occasions, beginning the day the legislation was announced. AID has also worked actively to disseminate information about the draft law to implementing partners, gather their feedback, and support their efforts to convey their views to the GOK. We will continue to emphasize to the GOK that the adoption of this legislation would have a ruinous effect on the development of civil society and would severely hamper our assistance efforts. End comment.

19. (U) Dushanbe minimize considered.

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